

## United States Senate

WASHINGTON, DC 20510

November 26, 2018

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The Honorable Ajit V. Pai  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Dear Chairman Pai,

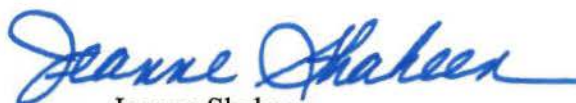
I am writing in response to recent action taken by the Federal Communications Commission (FCC) to advance a Second Notice of Proposed Rulemaking (MB Docket No. 05-311) regarding the way local franchising authorities (LFA) regulate cable operators. I have heard concerns from my constituents that the proposal, as written, would harm public, educational and government (PEG) stations. Local community media provides valuable information to residents in New Hampshire and across the country by delivering tailored news, community updates and creative programming. I hope that you and your colleagues at the FCC will take these concerns into account and ensure that the interests of local programming are considered when adopting a final rule.

In 1984, Congress passed the Cable Communications Act, which grants LFAs the authority to require that cable operators reserve channel capacity and provide adequate facilities, equipment or support for PEG stations. I am concerned that the FCC's proposal to expand the definition of in-kind services that can count toward franchise fees would result in a significant reduction in financial support for local programming. In the absence of public funding, PEG stations across the country rely on franchise fees to keep their content available and programs running. Local stations have expressed concern that the proposed rule, if adopted, would jeopardize their ability to fulfill their critical mission.

Local communities need PEG stations more than ever. They provide a platform for civic engagement and give viewers critical information about their local communities. Given the importance of these stations, I ask that the FCC closely examine the impact of the proposed changes on local community television and give full consideration to comments submitted for the record addressing these concerns.

Thank you for your attention to this important matter.

Sincerely,



Jeanne Shaheen  
United States Senator

CC: The Honorable Michael O'Rielly, Commissioner  
The Honorable Brendan Carr, Commissioner  
The Honorable Jessica Rosenworcel, Commissioner



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

November 29, 2018

The Honorable Jeanne Shaheen  
United States Senate  
506 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Shaheen:

Thank you for your letter regarding the impact that the statutory cap on franchise fees has on funding for public, educational, or governmental (PEG) channels. As you know, the Communications Act limits franchise fees to 5% of cable revenues and defines "franchise fee" to include "any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such." 47 U.S.C. § 542(g)(1). The U.S. Court of Appeals for the Sixth Circuit has held that the terms "tax" and "assessment" can include nonmonetary exactions. *Montgomery County, Md. et al. v. FCC*, 863 F.3d 485, 490-91 (6th Cir. 2017).

In response to a remand from the Sixth Circuit, the Commission unanimously issued its Second Further Notice of Proposed Rulemaking to consider the scope of the congressionally-mandated statutory limit on franchise fees. Among other things, the Commission observed that Congress broadly defined franchise fees; indeed, with respect to PEG channels, it only excluded support payments with respect to franchises granted prior to October 30, 1984 as well as capital costs required by franchises granted after that date. 47 U.S.C. § 542(g)(2)(B) & (C). The record of this proceeding remains open, and I encourage all interested parties and stakeholders—including local franchising authorities—to provide us with relevant evidence regarding these issues so that the Commission can make the appropriate judgment about the path forward, consistent with federal law. Your views will be entered into the record of the proceeding and considered as part of the Commission's review.

Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink that reads "Ajit V. Pai". The signature is fluid and cursive, with the first name "Ajit" being the most prominent part.

Ajit V. Pai